"What was stated by the investigating officer, Hujur Ahmad Khan in the present case was that certain information was supplied to him by the accused 1 in consequence of which he took certain steps. He did not seek to prove that information or any part thereof in the evidence which he gave before the court. Even when he said that Baliram dug out the tin box from the mud floor of a house at the instance of the accused 1, he did not seek to prove what that information was. The operation of section 27 was therefore not attracted and *'prima facie'* there was nothing to prevent that evidence being admitted against the accused 1."

Again in *Karam Din* v. *Emperor*[7] Dalip Singh J. said at page 340:

"In connection with this it is necessary to bear in mind that the word 'information' cannot be used as synonymous with the word 'statement'. There is no reason why the word 'information' should have been used instead of the word 'statement' in the section if by, 'information' statement alone was intended. The word 'information' as distinct from the word 'statement' connotes two things, namely a statement or other means employed for imparting knowledge possessed by one person to another, and the knowledge so derived by the other person."

The word "distinctly" in section 27 of the Evidence Ordinance is important. It means that only that part of the statement which leads directly to the recovery is admissible.

It is not necessary to go into the various authorities but a study of them does show that that part of the statement sought to be put in evidence under section 27 of the Evidence Ordinance which is the very admission of the commission of the crime has been held inadmissible. In the statement made by the accused to PW1 that he (the accused) had or possessed a revolver it cannot be said that "possession" of the revolver by the accused was "discovered in consequence of" the information given by the accused while in the custody of PW1. It further does not "distinctly" relate to the fact discovered in consequence of the information imparted by the accused. What can be said to be discovered is the fact that a revolver with three rounds of ammunition was lying hidden in the rubber estate and that the accused had knowledge of it. In the circumstances, apart from the very serious prejudicial effect the statement was likely to have against the accused, I am of the opinion that the learned president was wrong in admitting that confessionary statement.

The accused gave an explanation as to how he came to know where the revolver was lying hidden. The knowledge of the place where the revolver was lying hidden did not necessarily constitute possession by the accused unless there was further evidence produced by the prosecution that it was the accused who had hidden it there. In the circumstances the appeal is allowed and the conviction is quashed and the order of the learned president set aside.

Appeal allowed; Conviction quashed.

Solicitors: *Elyas Majeed & Co.*

MOHAMED MOKHTAR v. PUBLIC PROSECUTOR

[A. Cr. J. (Sharma J.) December 16, 1971.]

[Ipoh — Criminal Appeal No. 72 of 1971.]

Bribery and Corruption — Accomplice — Whether trap witness is one — Need for corroboration — When dispensed with — Prevention of Corruption Act, 1961, s. 4(a).

This was an appeal against conviction and sentence on a charge under section 4(a) of the Prevention of Corruption Act, 1961.

One of the grounds of appeal was that the complainant was an accomplice and that even if he was not, he at any rate was a participant in the crime and therefore there should be sufficient corroboration of his evidence.

Held, dismissing the appeal: the complainant was a trap witness at the most. Corroboration of the testimony of a trap witness is no doubt desirable and it is not safe to convict the accused in the absence of that corroboration. However, in the present case, the evidence was so clearly against the accused that no court using the standards of any reasonable man could possibly have come to any other inference except the clear guilt of the accused.

Per Sharma J.: "... when the appellate court is convinced, as I am in this case, that the conviction of the appellant was good and there is nothing to cast any shadow of doubt in the finding of guilt arrived at by the learned magistrate or the president, the court itself can deal with the matter as fully and as effectively even though the grounds of decision as appearing in the appeal record are found lacking in specific findings and the reasons for those findings..."

Observations on desirability of grounds of decision being comprehensive.

MAGISTRATE'S CRIMINAL APPEAL.

Edgar Joseph Jr. (*Kam Woon Wah* with him) for the appellant.

Haidar bin Mohd. Noor (Deputy Public Prosecutor) for the respondent.

Sharma J. (delivering oral judgment): This is an appeal against the conviction and sentence of the appellant on a charge under section 4(a) of the Prevention of Corruption Act 1961. The learned president found the appellant guilty of the charge, convicted him and sentenced him to one year's imprisonment. A number of grounds of appeal have been put forward, the most important of them being that the complainant P.W.12 was an accomplice and that even if he was not an accomplice he at any rate was a participant in the crime and therefore there should be sufficient corroboration of his evidence. I am unable to say how P.W.12 can, by any stretch of imagination, be called an accomplice. At the most he may be called a trap witness. The whole object of the Prevention of Corruption Act would be nullified if any public-spirited person decided to go to the Anti-Corruption Agency to tell them that a public officer had demanded a bribe from him and if as a result of his information to the Anti-Corruption Agency a trap was set against the officer in question by asking the member of the public to go and pay the bribe demanded to the said officer. Corroboration of the testimony of a trap witness is no doubt desirable and it is not safe to convict the accused in the absence of that corroboration. I entirely accept that proposition. In this case, however, the evidence was so clearly against the accused that no court using the stan-

dards of any reasonable man could possibly have come to any other inference except the clear guilt of the accused. The evidence discloses a long process of preparation for the commission of the offence. It was in fact the appellant who had hatched a plan to get the money out of P.W.12. Unfortunately for him that plan turned out to be a trap into which he himself fell. There were demands on the part of the appellant. There was refusal on his part to do anything for P.W.12 unless money was paid to him.

I have very carefully gone through and scrutinised the appeal record and all the evidence, both the prosecution and the defence, several times in order to ensure that no injustice may be done to the appellant. I have tried to view the evidence in as favourable a manner to the appellant as I reasonably could, but I find no reason to interfere with the finding of guilt arrived at by the learned president.

It has been urged that the grounds of decision supplied by the learned president are faulty in more ways than one, that he has not given his clear-cut findings on facts and that he has not said what witnesses he believed and what witnesses he did not believe. Having gone through the record very carefully, I think it is that type of a case where I can myself very safely and without any risk of injustice come to my own findings. On going through the evidence I do find that money was demanded by the appellant from P.W.12, that P.W.12 paid it to him and he accepted it. These findings are irresistible and I for a moment cannot see how any court could on the evidence as revealed and produced in this case come to any findings other than those. The money was provided in an envelope to P.W.12 by the Anti-Corruption Agency. P.W.12 handed this envelope to the appellant. The appellant, according to P.W.12, looked at the money and flipped the currency notes although he did not count the money. The act of handing over of the currency notes in the envelope was seen by P.W.14 and P.W.15 (P.W.14 and P.W.15 testified that they saw P.W.12 handing over that envelope to the appellant). I do not know what is corroboration if that is not corroboration. The money was not only handed over to the appellant but also found with the appellant before he was finally arrested. It has been suggested that money was in fact planted on the appellant and that P.W.12 was a member of the public who had a grudge against the appellant. I find no merit or strength in that argument taking into consideration the various applications P.W.12 had already made to the Land Office and the fact that it was only on the advice of P.W.11 that he went to the Anti-Corruption Agency. I am not prepared to accept the argument that P.W.12 had a grudge against the appellant.

It has been said there are no findings of fact and that the learned president has not given his reasons. It is undoubtedly desirable that the learned magistrates and the learned presidents should when writing their grounds of decision give their findings and the reasons for those findings. It has been suggested that it is mandatory on the part of the learned magistrates and the learned presidents to give such reasons. I have in one of the appeals held it to be so but it is not mandatory in the sense that failure to give such reasons would render the conviction void or turn the trial itself into a nullity. Sometimes the amount of work the magistrates have to cope with at a particular time may make it virtually impossible for them to write a well dressed judgment, flawless as it were, for the benefit of the appellant's counsel. There may, of course, be cases where because reasons are not given it may become difficult for the appellate court to come to its own findings and where because of the lack of such reasons there may be a likelihood of injustice being caused to the accused. In such cases the appellate court can always order a retrial. I do not think this appeal could be allowed on that sole ground as suggested by the learned counsel for the appellant. It is not a case which calls for a retrial or where any court could have any doubt as to the guilt of the appellant. When the appellate court is convinced, as I am in this case, that the conviction of the appellant was good and there is nothing to cast any shadow of doubt in the finding of guilt arrived at by the learned magistrate or the president, the court itself can deal with the matter as fully and as effectively even though the grounds of decision as appearing in the appeal record are found lacking in specific findings and the reasons for those findings. I cannot now ask the learned president to write out fresh grounds of decision to meet with the criticism levelled by the learned counsel for the appellant.

The only question which I have to consider is whether the defence put up by the appellant could reasonably be true. As I have already found and held that he had accepted money and that the money had come through and from the hands of P.W.12, the defence put up by him is nothing but extremely flimsy and totally unbelievable. It is one of the cases where the appellant had prepared P.W.12 to make the payment and this preparation had been going on sufficiently in time prior to the acceptance of that money by him.

I think I will be failing in my duty if I did not commend the part played by P.W.11 and P.W.12 in bringing the appellant to book and the efficient way in which the staff of the Anti-Corruption Agency acted in this case.

The appeal against conviction is dismissed.

As far as the sentence is concerned, the offence committed by the appellant is one of the very serious offences that any public servant can commit. As I said during the course of the arguments a greater sense of responsibility to duty is expected of the public servants. When they accept Government service, they accept it as part and parcel of their duties and obligations to the public and the government they decide to serve. The lure and greed of extorting money or getting a gratification from the public should be altogether outside their minds. They should not succumb to such temptations. Considering the part played by the appellant and the responsible position he held in the land office, I think the learned president acted too leniently when he sentenced the appellant to only

one year's imprisonment. The sentence is increased to 18 months. The sentence will run from today.

Appeal dismissed.

Sentence enhanced.

Solicitors: *Kam Woon Wah & Co.*

KOK KEE KWONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Raja Azlan Shah J.) December 20, 1971]

[Kuala Lumpur — Criminal Appeal No. 236 of 1971]

Evidence — Secondary evidence of document — Original wrongfully removed and fraudulently kept away — Notice to produce unnecessary — Evidence Ordinance 1950, ss. 65 and 66 proviso (c).

Criminal Law and Procedure — Sentence — First offender — Sentence reduced.

In this case the appellant had been convicted on a charge of criminal misappropriation. On appeal it was argued that the learned president erred in law by admitting carbon copies of store requisition notes contrary to sections 65 and 66 of the Evidence Ordinance. The learned president found as a fact that the appellant had fraudulently kept away originals of the requisition notes.

Held, dismissing the appeal against conviction: (1) the case came within the proviso (c) to section 66 of the Evidence Ordinance, and the carbon copies were admissible without notice to produce;

(2) sentence: in view of the fact that the appellant was a first offender, the sentence of eighteen months imprisonment would be set aside and one day's imprisonment and a fine of $2,000 substituted.

MAGISTRATE'S CRIMINAL APPEAL.

Lee Beng Cheang for the appellant.

Gunn Chit Tuan (Deputy Public Prosecutor) for the respondent.

Raja Azlan Shah J.: The appellant was convicted of misappropriating 120 bottles of Hennessy V.S.O.P. brandy and 24 bottles of Dewar's whisky valued at $2,928.00 between 19th January 1968 and 29th April 1968 and was sentenced to 18 months imprisonment under section 408 of the Penal Code. The prosecution case was based on the discrepancies between the store issue books (Exhibits P3A and P3B) and the store requisition notes both of which dealt with movement of liquor from the main store to the restaurant bar. Four requisition notes *i.e.*, Exhibits P5 to P8 are in issue:

(i) Entry on page 153 of Exhibit P3A dated 19th January 1968 *viz.*, Store Requisition Note No. 2702 showed 2 cases of Hennessy V.S.O.P. (1 case containing 12 bottles) were issued; Exhibit P5 dated 19th January 1968 (No. 2702) showed only 1 case was issued.

(ii) Entry on page 154 of Exhibit P3A dated 25th January 1968 *viz.*, Store Requisition Note No. 2712 showed 2 cases of Hennessy V.S.O.P.; Exhibit P6 dated 25th January 1968 (No. 2712) showed no item of Hennessy V.S.O.P.

(iii) Entry on page 30 of Exhibit P3B dated 26th April 1968 *viz.*, Store Requisition Note No. 2830 showed 3 cases of Hennessy V.S.O.P.; Exhibit P7 dated 26th April 1968 (No. 2830) showed no item of Hennessy V.S.O.P.

(iv) Entry on page 31 of Exhibit P3B dated 29th April 1968 *viz.*, Store Requisition Note No. 2835 showed 5 cases of Dewar's whisky and 4 cases of Hennessy V.S.O.P.; Exhibit P8 dated 29th April 1968 (No. 2835) showed only 3 cases of Dewar's whisky and no item of Hennessy V.S.O.P.

The appellant joined the staff of the Selangor Club in 1961. He left the club at the end of May 1968. Between 1963 and the end of May 1968 he was the store-keeper of the main store where liquor and beverages were stored. His duties regarding the issue of liquor to the restaurant bar were these: Whenever the bar captain wanted liquor for his bar he would write his requirements on a chit of paper, the store-keeper would then transfer the particulars in the store requisition note. On being satisfied that he had received his order the captain would then sign his name at the bottom of the requisition note *i.e.*, on the space provided above the words "Headboy". The requisition note consists of three copies. The first copy was kept by the store-keeper, the second copy was given to the bar captain and the third copy remained in the book. The store-keeper would then record the details in the store issue book. It must be noted that it was his duty to keep and maintain the store issue book and the store requisition notes.

Items (i) and (ii) above:—

Han Hah Juan — (PW7) the restaurant bar captain who had ordered liquor from the appellant for some 5 or 6 years in the manner described above identified his signature in Exhibit P5. He testified that he acknowledged receipt of the items mentioned in Exhibit P5 after checking them with the accused. In other words he received only one case of Hennessy V.S.O.P. brandy. He also identified his own signature in Exhibit P6. He said no Hennessy V.S.O.P. brandy was ordered or issued on that day. The witness also identified the writings in Exhibits P5 and P6 as those of the accused.

Items (iii) and (iv) above:—

Foo Ah Wee (PW8) — the bar captain identified his signature in Exhibits P7 and P8. He testified that he did not order or receive any Hennessy V.S.O.P. brandy on those two days mentioned in the requisition notes. He said accused wrote down the particulars in the two requisition notes and he identified accused's handwriting on them.

Lee Yew Thong (PW3) — the secretary of the club who had worked with the accused since 1961 is familiar with the accused's handwriting. He identified the writings in Exhibits P3A, P3B and P5 to P8 as those of the accused.

The learned president was satisfied that the requisition notes and the relevant entries in the store issue book were in the handwriting of the accused. On the question of credibility he had no reason to doubt the prosecution witnesses' testimony after seeing and hearing them.